



September 4, 2009

**NOTICE TO PUBLIC
CITY OF WINCHESTER**



ITB# 200751 Waste Receptacles

The City of Winchester will accept sealed bids until 2:00 pm local time on September 25, 2009 in the office of the Finance Department. - Purchasing Division, Rouss City Hall, Winchester, VA 22601, to provide outdoor waste receptacles, including all hardware materials and parts, for assembly and installation on city-owned property, or right-of-way per our attached specifications and requirements.

Copies of this Invitation to Bid may be obtained upon request from the Office of the Finance Department-Purchasing Agent, telephone (540) 667-1815 ext. 1477, or they may be picked up at the above location. Bids/Proposals may be viewed on the City's web page: <http://www.winchesterva.gov/purchasing>

Offerors should carefully examine the specifications and fully inform themselves as to all conditions and matters, which would in any way, affect the equipment/materials/service or cost thereof. Should a bidder find discrepancies in, or omissions from the specifications or invitation to bid, he should notify the Purchasing Agent and obtain clarification prior to submitting bid. Only questions answered by formal written Addenda will be binding; oral and other interpretations or classifications will be without legal effect.

The right is reserved, as the interest of the City may require, to revise or amend the specifications prior to the date set for opening sealed bids; the opening date may be postponed if deemed necessary by the Purchasing Agent. Such revisions and amendments, if any, will be announced by written Addenda to the specifications. ***In addition, the City reserves the right to accept or reject any and all bids and waive informalities.***

Bids are to be submitted in a sealed envelope bearing the Offeror's company name, address, the proposal name, number and the date and time due and mailed or delivered to:

City of Winchester
Finance Department-Purchasing Division
15 N. Cameron Street
Winchester, VA 22601

BY: Steven Corbit
Purchasing Agent
City of Winchester, Virginia

Table of Contents

Section

I.	GENERAL
II.	PRE-BID MEETING
III.	EXCEPTIONS TO THE SPECIFICATIONS
IV.	QUESTIONS AND CLARIFICATIONS
V.	SUBMISSION REQUIREMENTS
VI.	STATEMENT OF NEEDS
VII.	BID FORM
VIII.	SPECIAL TERMS AND CONDITIONS
IX.	GENERAL TERMS AND CONDITIONS
X.	FEDERAL CONTRACT CLAUSES
APPENDIX A - CONTRACT	

I. GENERAL:

- A.** The City of Winchester is soliciting sealed bids for a qualified contractor to provide and deliver waste receptacles per our specifications and requirements listed herein.
- B.** This procurement may be paid with federal funding and if a conflict arises in the terms and conditions, then the following precedence of terms shall apply: 1.) FTA contract clauses, 2.) Special Terms and Conditions and 3.) General Terms and Conditions.
- C.** Length of Contract shall originate on October 1, 2009 and remain in effect for twelve (12) months. The City reserves the right to cancel and terminate this Contract, without penalty, upon ten (10) days written notice to contractor. The parties understand and agree that by mutual agreement this Contract may renew for one (1) additional twelve (12) month period.
- D.** The City of Winchester reserves the right to utilize a purchase order as our contract document in lieu of signing Appendix A. All provisions of this ITB shall be fully incorporated into the purchase order and any subsequent purchase order(s) during renewal.

II. PRE-BID MEETING

- A.** None Required

III. EXCEPTIONS TO THE SPECIFICATIONS:

- A.** Bidders taking exception to any part or section of these specifications shall indicate such exceptions on their bid. Failure to indicate any exceptions shall be interpreted as the bidder's intent to fully comply with the specifications as written. The City reserves the right to accept or reject any and all bids, in whole or in part, and to waive informalities.

IV. QUESTIONS AND CLARIFICATIONS:

- A.** Site visit, requests for information, or clarifications regarding the specifications should be addressed to: **Steven Corbit, Purchasing Agent, 15 North Cameron Street, Winchester, VA 22601, (540) 667-1815 Ext. 1477, email: scorbit@ci.winchester.va.us**
- B.** Only questions answered by formal written Addenda will be binding; oral and other interpretations will be without legal effect.
- C.** Questions regarding this solicitation must be submitted in writing at least five (5) business days prior to the bid due date.

V. SUBMISSION REQUIREMENTS - Failure to meet these requirements may result in a non-responsive proposal:

- A.** All bidders shall provide official proof, i.e. business license, tax return, or other form of verification, confirming that they have been in business for at least five (5) years.
- B.** Firms shall confirm in writing that they are not currently on any debarment or suspension list of any local, state or federal government. Any firm found to be listed shall be rejected as non-responsive.
- C.** Completion of all Sections outlined within the Special Terms and Conditions:

1. Part E – provide earliest delivery date.
 2. Part K - provide at least five (5) references similar in scope to this ITB. Do not include and City of Winchester or Winchester Public Schools as references of prior work performed. Complete reference page provided herein.
- D.** Completion of the Bid Form.
- E.** Provide one (1) original hardcopy of the entire bid and two (2) copies of the original hardcopy in a sealed envelope bearing the company name, company address, the proposal name, ITB number, and the due date and time mailed or delivered to:

City of Winchester
Finance Department - Purchasing Division
15 North Cameron Street, 1st Floor - Rouss City Hall
Winchester, Virginia 22601

VI. STATEMENT OF NEEDS:

The City of Winchester is soliciting sealed bids for a qualified contractor to provide and deliver waste receptacles, including all labor, supervision, equipment, overhead and transportation per our specifications and requirements listed herein. Only the highest quality, materials, supplies, parts and goods will be accepted.

A. GENERAL SCOPE

1. Bidders may choose to bid on each item or group of items or all items herein.
2. The listed quantities are annual estimates and they are for bidding purposes only. Quantities and orders may be infrequent at times and the city does not guarantee any volume. The City reserves the right, without penalty or default of contract, to purchase off contract when it is in the city's best interests. The city may add or delete quantities from this contract when deemed in the best interest of the city.
3. Delivery Terms:
 - a. F.O.B Shipping Destination: City of Winchester-Transit Department, Attention: Renee Wells, 301 East Cork Street, Winchester, VA 22602, Phone (540)667-1815 Ext. 1501.
 - b. Unless otherwise noted during time of order and agreed to between the contractor and the city, the above shipping destination shall prevail on all shipments.

B. GENERAL WORK PROCEDURES:

1. Delivery Tickets and Invoices:
 - a. Each and every delivery shall be fully documented on a ticket, generated by the Contractor, as to the goods delivered. Such documentation shall consist of date, delivery location, materials or supplies provided, manufacturer and product number, quantities, and any other such pertinent information. This ticket shall be signed by the Contractor's representative and submitted to the City's representative for approval, prior to payment by the City.

- b. All invoices submitted to the City shall include copies of the delivery ticket, which will be reviewed and approved for payment by the City's representative.
 - c. This procedure shall be strictly and uniformly complied with in order for an invoice to be paid. All invoices received that do not include said documentation shall be returned to the Contractor unpaid.
 - d. All invoices are to be sent to the requesting Owner's Representative. Payment will be made within thirty (30) days following receipt of correct invoice including all required documentation.
2. All tools and equipment required to perform the delivery shall be provided by the Contractor.

C. DESIGN SPECIFICATION:

- 1. Model ES-142 as manufactured by Victor Stanley, or approved equal.
- 2. Contractor will provide waste receptacles in manufacturer's original, unopened containers and packaging fully assembled. All required specifications, installation instructions, hardware and accessories for installation will be provided at delivery.
- 3. Receptacles shall be constructed of 1/4" x 1" vertical solid steel bars; 1/4" x 2-1/2" horizontal solid steel bands; 3/8" x 3" steel support bars; 5/8" solid steel top ring; leveling feet with a 3/8" diameter threaded steel shaft.
- 4. 36-gallon (136 liter) capacity high density plastic liner [weight not to exceed 6 lbs.]. Color: Black.
- 5. Plastic inner liners must be molded and offer maximum capacity and strength with lightweight construction using molded ribs, handholds and high strength material minimizing handling difficulty and facilitating easy emptying and storage.
- 6. Receptacle lids shall be domed with optional ashtray.
- 7. All fabricated metal components shall be steel shot blasted, etched, phosphatized, preheated, and electrostatically powder-coated with TGIC polyester powder coatings. Products shall be fully cleaned and pretreated, preheated and coated while hot to fill crevices and build coating film. Coated parts are fully cured to coating manufacturer's specifications. The thickness of the resulting finish averages 8-10 mils (200-250 microns). Powder coat color shall be black.
- 8. Receptacles must be clean, neat and free of sharp or irregular corners or edges.
- 9. Each receptacle shall be guaranteed against faulty workmanship, material, assembly and installation for at least one (1) year from date of delivery. The contractor shall repair or replace any defective items at no cost to the City of Winchester.
- 10. Optional Items:

- a. Item A: Customized lids featuring a small diameter hold for recycling.
- b. Item B: Customized decals depicting the City's recycling program or departmental logos may be required. Decals must be highly visible, 360-degree display (10" – 12" width). Decals shall be placed on a steel band, up to 12" in width", that wraps completely around the top of the receptacle. Steel band shall be powder coated.

D. MATERIAL AND QUALITY OF WORKMANSHIP:

1. All parts furnished under this contract shall be new and genuine manufacturer's materials, supplies, parts and goods. All materials, supplies, parts and goods shall be new, free of wear, defect or damage and contain no evidence of prior usage. All goods shall not have any record of having been stolen.
2. The Contractor shall guarantee all materials, supplies, parts and goods for a minimum period of thirty (30) days or the manufacturer's warranty, whichever is longer.
3. Unless qualified by the provision "NO SUBSTITUTE", the use of the name of the manufacturer, brand make or catalog designation in specifying an item does not restrict bidders to the manufacturer, brand, make or catalog designation identification. This is used simply to indicate the character, quality and/or performance equivalence of the commodity desired. The commodity on which bids are submitted must be of such character, quality, and/or performance equivalence that it will serve as that specified. In submitting bids on a commodity other than as specified, bidder shall furnish complete data and identification with respect to the alternate commodity they propose to furnish. Consideration will be given to bids submitted on alternate commodities to the extent that such action is deemed to serve the best interests of the City. If the bidder does not indicate that the commodity he proposes to furnish is other than specified, it will be construed to mean that the bidder proposes to furnish the exact commodity described.

E. CONTRACT ADMINISTRATION:

1. The Transit Director shall be the Contract Administrator and they may authorize a designee delegated to perform these duties as outlined: ordering, monitoring of progress, inspection and acceptance, quality assurance, invoice payment and scheduling of deliveries.
 - a. Acceptance:
 - i. The location, department or agency has seven (7) business days from time of completion to accept the delivery and ensure compliance to all city, state and federal guidelines and laws.
 - ii. If the delivery is rejected in whole or in part due to poor quality, wrong or inferior product or poor delivery service or other related issues, the city shall outline in writing the problem(s) and notify the contractor.
 - A. When the contractor is notified of non-acceptance in writing by the city, the contractor shall have five (5) business days to correct the problem. The owner

representative or designee may extend this period if agreed upon in writing by both parties.

2. Contract Officer:
 - a. Shall be: Steven Corbit, Purchasing Agent, Finance Department, 15 N. Cameron Street, Winchester, VA 22601, (54)667-1815 Ext. 1477.
 - b. Duties include: making decisions for dispute resolution, administering change orders and amendments, executing supplemental agreements, negotiating and authorizing contract renewals.

END OF SPECIFICATIONS

VII. BID FORM

ITB# 200751 Waster Receptacles

This Bid Sheet, completely filled out, in a sealed envelope, with the ITB #, the ITB name, and Bidder's name clearly marked on the outside of the envelope must be received in the Finance Department – Purchasing Division – 15 North Cameron Street, Rouss City Hall, Winchester, VA 22601 by 2:00 p.m. local time on September 25, 2009.

	Qty:	Unit Cost	Extended Cost
Shelters:			
1. Delivered, Unit Price for Waste Receptacles:	50	x \$ _____ =	\$ _____
Description: _____			
(A) Sub-total:			\$ _____
Optional Items:			
2. Delivered, Unit Price for Item A, per Specifications:	10	x \$ _____ =	\$ _____
3. Delivered, Unit Price for Item B, per Specifications:	10	x \$ _____ =	\$ _____
(B) Sub-total:			\$ _____
TOTAL BASE BID (A+B):			\$ _____

- Agreeable to all Specifications? ☐ YES ☐ NO
(If 'No', then please reference Section III of this Bid Document and follow instructions)

COMPANY NAME: _____

ADDRESS: _____

TELEPHONE NUMBER: _____

EMAIL ADDRESS: _____

NAME AND TITLE: _____

DATE: _____

SIGNATURE: _____

By signing this bid sheet, bidder acknowledges that he completely understands all Specifications and the General Conditions and Instructions to Bidders. Failure to completely fill out Bid Sheet and Appendix A will result in a non-responsive bid.

VIII. SPECIAL TERMS AND CONDITIONS

- A. AWARD:** The City of Winchester will make the award(s) on Total Base Bid basis to the lowest responsive and responsible bidder. The purchasing office reserves the right to conduct any test it may deem advisable and to make all evaluations. The City of Winchester also reserves the right to reject any or all bids, in whole or in part, to waive informalities and to delete items prior to making the award, whenever it is deemed in the sole opinion of the procuring public body to be in its best interest.
- B. BID ACCEPTANCE PERIOD:** Any bid in response to this solicitation shall be valid for sixty (60) days. At the end of the sixty (60) days the bid may be withdrawn at the written request of the bidder. If the bid is not withdrawn at that time it remains in effect until an award is made or the solicitation is canceled.
- C. BID PRICES:** Bid shall be in the form of a firm unit price for each item during the contract period. In the case of error in the extension of prices, the unit price shall govern.
- D. DELIVERY NOTIFICATION:** The City shall be notified 24 hours prior to delivery of any items so that personnel may be available to allow access to the building and verify items received. Notification shall be made to:
- | | |
|--------------------------------------|-------------------------------|
| <u>Renee Wells, Transit Director</u> | <u>540-667-1815 Ext. 1501</u> |
| Name | Phone |
- E. DELIVERY:** State your earliest firm delivery or performance date _____, 2009. This may a factor in making the award.
- F. EXTRA CHARGES NOT ALLOWED:** The bid price shall be for complete delivery of all ordered materials, supplies, parts and goods for the City of Winchester's use, and shall include all applicable freight, overhead, loading/unloading and storage charges; extra charges will not be allowed.
- G. QUANTITIES:** Quantities set forth in this solicitation are estimates only, and the contractor shall supply at bid prices actual quantities as ordered, regardless of whether such total quantities are more or less than those shown.
- H. SUBCONTRACTS:** No portion of the work shall be subcontracted without prior written consent of the Purchasing Agent or designee. In the event that the contractor desires to subcontract some part of the work specified herein, the contractor shall furnish the Purchasing Agent, or designee the names, qualifications and experience of their proposed subcontractors. The contractor shall, however, remain fully liable and responsible for the work to be done by its subcontractor(s) and shall assure compliance with all requirements of the contract.
- I. AUDIT:** The contractor shall retain all books, records, and other documents relative to this contract for five (5) years after final payment, or until audited by the City of Winchester, whichever is sooner. The City, its authorized agents, and/or City auditors shall have full access to and the right to examine any of said materials during said period.
- J. RENEWAL OF CONTRACT:** This contract may be renewed by the City of Winchester for one (1) successive one year period under the terms and conditions of the original contract. Price increases may be negotiated only at the time of renewal. Written notice of the City of Winchester's intention to renew shall be given approximately 90 days prior to the expiration date of each contract period.

- K. REFERENCES:** Bidders shall provide a list of at least 5 references where similar goods and/or services have been provided. Each reference shall include the name of the organization, the complete mailing address, the name of the contact person and telephone number.

	<u>ORGANIZATION</u>	<u>ADDRESS</u>	<u>CONTACT PERSON</u>	<u>TELEPHONE</u>
1.	_____	_____	_____	_____
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

- L. COOPERATIVE PROCUREMENT:** Any successful Bidder/Offeror, may at his sole discretion, allow any public body, locality, authority, agency, and school board of the Commonwealth to participate in the Invitation to Bid for the purpose of combining requirements to increase efficiency or reduce administrative expenses.

- M. WARRANTY (COMMERCIAL):** The contractor agrees that the goods or services furnished under any award resulting from this solicitation shall be covered by the most favorable commercial warranties the contractor gives any customer for such goods or services and that the rights and remedies provided therein are in addition to and do not limit those available to the City of Winchester by any other clause of this solicitation. A copy of this warranty should be furnished with the bid/proposal.

XI. CITY OF WINCHESTER -REQUIRED GENERAL TERMS AND CONDITIONS

- A. APPLICABLE LAWS AND COURTS
- B. ANTI-DISCRIMINATION
- C. ETHICS IN PUBLIC CONTRACTING
- E. IMMIGRATION REFORM AND CONTROL ACT OF 1986
- F. DEBARMENT STATUS
- G. ANTITRUST
- H. MANDATORY USE OF CITY FORM AND TERMS AND CONDITIONS
- I. CLARIFICATION OF TERMS
- J. PAYMENT
- K. PRECEDENCE OF TERMS
- L. QUALIFICATIONS OF BIDDERS OR OFFERORS
- M. TESTING AND INSPECTION
- N. ASSIGNMENT OF CONTRACT
- O. SEVERABILITY
- P. CHANGES TO THE CONTRACT
- Q. DEFAULT
- R. TAXES
- S. USE OF BRAND NAMES
- T. TRANSPORTATION AND PACKAGING
- U. INSURANCE
- V. ANNOUNCEMENT OF AWARD
- W. DRUG-FREE WORKPLACE
- X. NONDISCRIMINATION OF CONTRACTORS
- Y. AVAILABILITY OF FUNDS
- Z. LICENSES AND PERMITS
- AZ. TERMINATION
- BZ. HOLD HARMLESS

These General Terms and Conditions are required for all sealed and unsealed written solicitations issued by the City of Winchester for procurements that are subject to the Winchester City Code unless changed, deleted or revised by the City Attorney.

- A. **APPLICABLE LAWS AND COURTS:** This solicitation and any resulting contract shall be governed by the laws of the Commonwealth of Virginia. Any dispute arising from the performance or non-performance of this Agreement shall be resolved or otherwise litigated in the Circuit Court for the City of Winchester, Virginia or the Fourth Circuit Federal District Court in Harrisonburg, Virginia. The agency and the contractor are encouraged to resolve any issues in controversy arising from the award of the contract or any contractual dispute following the Winchester City Code, Chapter 21-61. The contractor shall comply with all applicable federal, state and local laws, rules and regulations.
- B. **ANTI-DISCRIMINATION:** By submitting their (bids/proposals), (bidders/offerors) certify to the City of Winchester that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and § 2.2-4311 of the *Virginia Public Procurement Act (VPPA)*. If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (*Code of Virginia*, § 2.2-4343.1E).

In every contract over \$10,000 the provisions in 1. and 2. below apply:

1. During the performance of this contract, the contractor agrees as follows:
 - a. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
 - b. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.
 - c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting these requirements.
 2. The contractor will include the provisions of 1. above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.
- C. **ETHICS IN PUBLIC CONTRACTING:** By submitting their (bids/proposals), (bidders/offers) certify that their (bids/proposals) are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other (bidder/offeror), supplier, manufacturer or subcontractor in connection with their (bid/proposal), and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.
- D. **IMMIGRATION REFORM AND CONTROL ACT OF 1986:** By submitting their (bids/proposals), (bidders/offers) certify that they do not and will not during the performance of this contract employ illegal alien workers or otherwise violate the provisions of the federal Immigration Reform and Control Act of 1986.
- E. **DEBARMENT STATUS:** By submitting their (bids/proposals), (bidders/offers) certify that they are not currently debarred by the Federal Government, Commonwealth of Virginia, or by any City, Town or County from submitting bids or proposals on contracts for the type of goods and/or services covered by this solicitation, nor are they an agent of any person or entity that is currently so debarred.
- F. **ANTITRUST:** By entering into a contract, the contractor conveys, sells, assigns, and transfers to the City of Winchester all rights, title and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the City of Winchester under said contract.
- H. **MANDATORY USE OF CITY FORM AND TERMS AND CONDITIONS:** Failure to submit a bid/proposal on the official City form provided for that purpose may be a cause for rejection of the bid/proposal. Modification of or additions to the General Terms and Conditions of the solicitation may be cause for rejection of the bid/proposal; however, the City of Winchester reserves the right to decide, on a case by case basis, in its sole discretion, whether to reject such a bid/proposal.
- I. **CLARIFICATION OF TERMS:** If any prospective (bidder/offeror) has questions about the specifications or other solicitation documents, the prospective (bidder/offeror) should contact the buyer whose name appears on the face of the solicitation no later than five working days before the due date. Any revisions to the solicitation will be made only by addendum issued by the Purchasing Agent, or designee.
- J. **PAYMENT:**
1. **To Prime Contractor:**
 - a. Invoices for items ordered, delivered and accepted shall be submitted by the contractor directly to the payment address shown on the purchase order/contract. All invoices shall show the state

contract number and/or purchase order number; social security number (for individual contractors) or the federal employer identification number (for proprietorships, partnerships, and corporations).

- b. Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.
- c. All goods or services provided under this contract or purchase order, that are to be paid for with public funds, shall be billed by the contractor at the contract price, regardless of which department is being billed.
- d. The following shall be deemed to be the date of payment: the date of postmark in all cases where payment is made by mail.
- e. **Unreasonable Charges.** Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, contractors should be put on notice that final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges. Charges which appear to be unreasonable will be researched and challenged, and that portion of the invoice held in abeyance until a settlement can be reached. Upon determining that invoiced charges are not reasonable, the City of Winchester shall promptly notify the contractor, in writing, as to those charges which it considers unreasonable and the basis for the determination. A contractor may not institute legal action unless a settlement cannot be reached within thirty (30) days of notification. The provisions of this section do not relieve an agency of its prompt payment obligations with respect to those charges which are not in dispute (*Code of Virginia*, § 2.2-4363).

2. To Subcontractors:

- a. A contractor awarded a contract under this solicitation is hereby obligated:
 - (1) To pay the subcontractor(s) within seven (7) days of the contractor's receipt of payment from the City of Winchester for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract; or
 - (2) To notify the agency and the subcontractor(s), in writing, of the contractor's intention to withhold payment and the reason.
- b. The contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the contract) on all amounts owed by the contractor that remain unpaid seven (7) days following receipt of payment from the City of Winchester, except for amounts withheld as stated in (2) above. The date of mailing of any payment by U. S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier contractor performing under the primary contract. A contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the City of Winchester.

K. **PRECEDENCE OF TERMS:** The following General Terms and Conditions APPLICABLE LAWS AND COURTS, ANTI-DISCRIMINATION, ETHICS IN PUBLIC CONTRACTING, IMMIGRATION REFORM AND CONTROL ACT OF 1986, DEBARMENT STATUS, ANTITRUST, MANDATORY USE OF CITY FORM AND TERMS AND CONDITIONS, CLARIFICATION OF TERMS, PAYMENT shall apply in all instances. In the event there is a conflict between any of the other General Terms and Conditions and any Special Terms and Conditions in this solicitation, the Special Terms and Conditions shall apply.

L. **QUALIFICATIONS OF (BIDDERS/OFFERORS):** The City of Winchester may make such reasonable investigations as deemed proper and necessary to determine the ability of the (bidder/offeror) to perform the services/furnish the goods and the (bidder/offeror) shall furnish to the City of Winchester all such information and data for this purpose as may be requested. The City of Winchester reserves the right to inspect (bidder's/offeror's) physical facilities prior to award to satisfy questions regarding the (bidder's/offeror's) capabilities. The City of Winchester further reserves the right to reject any (bid/proposal) if the evidence submitted by, or investigations of, such (bidder/offeror) fails to satisfy the City of Winchester that such

(bidder/offeror) is properly qualified to carry out the obligations of the contract and to provide the services and/or furnish the goods contemplated therein.

- M. **TESTING AND INSPECTION:** The City of Winchester reserves the right to conduct any test/inspection it may deem advisable to assure goods and services conform to the specifications.
- N. **ASSIGNMENT OF CONTRACT:** A contract shall not be assignable by the contractor in whole or in part without the written consent of the City of Winchester.
- O. **SEVERABILITY OF CONTRACT:** In the event that any provision shall be adjudged or decreed to be invalid, such ruling shall not invalidate the entire Agreement but shall pertain only to the provision in question and the remaining provisions shall continue to be valid, binding and in full force and effect.
- P. **CHANGES TO THE CONTRACT:**
1. A public contract may include provisions for modification of the contract during performance, but no fixed-price contract may be increased by more than twenty-five percent of the amount of the contract or ten thousand dollars (\$10,000), whichever is greater, without the advance written approval of the City Council. In no event may the amount of any contract, without adequate consideration, be increased for any purpose, including, but not limited to, relief of an offeror from the consequences of an error in its bid or offer (Winchester City Code 21-44).
 2. Changes can be made to the contract in any of the following ways:
 - a. The parties may agree in writing to modify the scope of the contract. An increase or decrease in the price of the contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the contract.
 - b. The City of Winchester may order changes within the general scope of the contract at any time by written notice to the contractor. Changes within the scope of the contract include, but are not limited to, things such as services to be performed, the method of packing or shipment, and the place of delivery or installation. The contractor shall comply with the notice upon receipt. The contractor shall be compensated for any additional costs incurred as the result of such order and shall give the City of Winchester a credit for any savings. Said compensation shall be determined by one of the following methods:
 1. By mutual agreement between the parties in writing; or
 2. By agreeing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units, and the contractor accounts for the number of units of work performed, subject to the City of Winchester's right to audit the contractor's records and/or to determine the correct number of units independently; or
 3. By ordering the contractor to proceed with the work and keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The contractor shall present the City of Winchester with all vouchers and records of expenses incurred and savings realized. The City of Winchester shall have the right to audit the records of the contractor as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by written notice to the City of Winchester within thirty (30) days from the date of receipt of the written order from the City of Winchester. If the parties fail to agree on an amount of adjustment, the question of an increase or decrease in the contract price or time for performance shall be resolved in accordance with the procedures for resolving disputes provided by the Disputes Clause of this contract or, if there is none, in accordance with the disputes provisions of the City of Winchester Code. Neither the existence of a claim nor a dispute resolution process, litigation or any other provision of this contract shall excuse the contractor from promptly complying with the changes ordered by the City of Winchester or with the performance of the contract generally.

- Q. **DEFAULT:** In case of failure to deliver goods or services in accordance with the contract terms and conditions, the City of Winchester, after due oral or written notice, may procure them from other sources and hold the contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which the City of Winchester may have.
- R. **TAXES:** Sales to the City of Winchester are normally exempt from State sales tax. State sales and use tax certificates of exemption, Form ST-12, will be issued upon request.
- S. **USE OF BRAND NAMES:** Unless otherwise provided in this solicitation, the name of a certain brand, make or manufacturer does not restrict (bidders/offers) to the specific brand, make or manufacturer named, but conveys the general style, type, character, and quality of the article desired. Any article which the public body, in its sole discretion, determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted. The (bidder/offeror) is responsible to clearly and specifically identify the product being offered and to provide sufficient descriptive literature, catalog cuts and technical detail to enable the City of Winchester to determine if the product offered meets the requirements of the solicitation. This is required even if offering the exact brand, make or manufacturer specified. Normally in competitive sealed bidding only the information furnished with the bid will be considered in the evaluation. Failure to furnish adequate data for evaluation purposes may result in declaring a bid nonresponsive. Unless the (bidder/offeror) clearly indicates in its (bid/proposal) that the product offered is an equal product, such (bid/proposal) will be considered to offer the brand name product referenced in the solicitation.
- T. **TRANSPORTATION AND PACKAGING:** By submitting their (bids/proposals), all (bidders/offers) certify and warrant that the price offered for FOB destination includes only the actual freight rate costs at the lowest and best rate and is based upon the actual weight of the goods to be shipped. Except as otherwise specified herein, standard commercial packaging, packing and shipping containers shall be used. All shipping containers shall be legibly marked or labeled on the outside with purchase order number, commodity description, and quantity.
- U. **INSURANCE:** By signing and submitting a bid or proposal under this solicitation, the bidder or offeror certifies that if awarded the contract, it will have the following insurance coverage at the time the contract is awarded. For construction contracts, if any subcontractors are involved, the subcontractor will have workers' compensation insurance in accordance with §§ 2.2-4332 and 65.2-800 et seq. of the *Code of Virginia*. The bidder or offeror further certifies that the contractor and any subcontractors will maintain these insurance coverage during the entire term of the contract and that all insurance coverage will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

MINIMUM INSURANCE COVERAGES AND LIMITS REQUIRED FOR MOST CONTRACTS:

1. Workers' Compensation - Statutory requirements and benefits. Coverage is compulsory for employers of three or more employees, to include the employer. Contractors who fail to notify the City of Winchester of increases in the number of employees that change their workers' compensation requirements under the *Code of Virginia* during the course of the contract shall be in noncompliance with the contract.
2. Employer's Liability - \$100,000.
3. Commercial General Liability - \$1,000,000 per occurrence. Commercial General Liability is to include bodily injury and property damage, personal injury and advertising injury, products and completed operations coverage. The City of Winchester must be named as an additional insured and so endorsed on the policy.
4. Automobile Liability - \$1,000,000 per occurrence. (Only used if motor vehicle is to be used in the contract.)

NOTE: In addition, various Professional Liability/Errors and Omissions coverages are required when soliciting those services as follows:

Profession/Service

Limits

Accounting	\$1,000,000 per occurrence, \$3,000,000 aggregate
Architecture	\$2,000,000 per occurrence, \$6,000,000 aggregate
Asbestos Design, Inspection or Abatement Contractors	\$1,000,000 per occurrence, \$3,000,000 aggregate
Health Care Practitioner (to include Dentists, Licensed Dental Hygienists, Optometrists, Registered or Licensed Practical Nurses, Pharmacists, Physicians, Podiatrists, Chiropractors, Physical Therapists, Physical Therapist Assistants, Clinical Psychologists, Clinical Social Workers, Professional Counselors, Hospitals, or Health Maintenance Organizations.)	\$1,925,000 per occurrence, \$3,000,000 aggregate
(Limits increase each July 1 through fiscal year 2008, as follows: July 1, 2008 - \$2,000,000. This complies with §8.01-581.15 of the <i>Code of Virginia</i> .)	
Insurance/Risk Management	\$1,000,000 per occurrence, \$3,000,000 aggregate
Landscape/Architecture	\$1,000,000 per occurrence, \$1,000,000 aggregate
Legal	\$1,000,000 per occurrence, \$5,000,000 aggregate
Professional Engineer	\$2,000,000 per occurrence, \$6,000,000 aggregate
Surveying	\$1,000,000 per occurrence, \$1,000,000 aggregate

- V. **ANNOUNCEMENT OF AWARD:** Upon the award or the announcement of the decision to award a contract over \$50,000, as a result of this solicitation, the Purchasing Agent will publicly post such notice on the City of Winchester's web site (www.winchesterva.gov/purchasing) for a minimum of 10 days.
- W. **DRUG-FREE WORKPLACE:** During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.
- For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.
- X. **NONDISCRIMINATION OF CONTRACTORS:** A bidder, offeror, or contractor shall not be discriminated against in the solicitation or award of this contract because of race, religion, color, sex, national origin, age, disability, faith-based organizational status, any other basis prohibited by state law relating to discrimination in employment or because the bidder or offeror employs ex-offenders unless the state agency, department or institution has made a written determination that employing ex-offenders on the specific contract is not in its best interest. If the award of this contract is made to a faith-based organization and an individual, who applies for or receives goods, services, or disbursements provided pursuant to this contract objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, services, or disbursements, the public body shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, services, or disbursements from an alternative provider.
- Y. **AVAILABILITY OF FUNDS:** In the event that funds are not appropriated for this Contract for any City fiscal year, following the City's current year, the Contract shall terminate automatically as of the last day for which funds were appropriated without the City providing written notice to the Contractor prior to the date of termination. The City shall not consider termination of the Contract pursuant to this section default. Upon such termination, the City shall be released from any obligation to make future payments and shall not be liable for cancellation or termination charges.
- Z. **LICENSES AND PERMITS:** Contractors will be responsible for all licenses and permits, if required. Any person, firm, or corporation responding to this invitation to bid which is required to have a current and valid

City of Winchester business license and, in fact, does not, will not be considered a "responsive bidder" as such term is defined by the Code of Virginia §2.2-4301, as amended. Any bid received from such an entity may be rejected, at the City's sole option, for that reason alone. In addition, the successful bidder or offeror will be required to produce affirmative evidence, satisfactory to the Purchasing Agent, or designee that it has such a license, or is not required to have such a license, prior to approval and execution of any contract to perform the work herein described.

AZ TERMINATION:

- a. Termination for Convenience: The City of Winchester may terminate a contract, in whole or in part, whenever the City OF Winchester determines that such termination is in the best interest of the City of Winchester, without showing cause, upon giving ten (10) days written notice to the vendor.
- b. Termination for Default: When the vendor has not performed or has unsatisfactorily performed the contract, the City of Winchester may terminate the contract for default. Upon termination for default, payment may be withheld at the discretion of the City of Winchester. The Vendor will be paid for work satisfactorily performed prior to termination.

- BZ HOLD HARMLESS:** Bids/Proposal shall provide that during the term of the contract, including warranty period, for the successful bidder/offeror indemnifying, defending, and holding harmless the City, its officers, employees, agent and representatives thereof from all suits, actions, claims of any kind, including attorney's fees, brought on account of any personal injuries, damages, or violation of rights sustained by any person or property in consequence of any neglect in safeguarding contract work, or on account of any act or omission by the contractor or his employees, or from any claims or amounts arising from violation of any law, bylaw, ordinance, regulation or decree. The vendor agrees that this clause shall include claims involving infringement of patent or copyrights.

**X. FEDERAL TRANSIT ADMINISTRATION CONTRACT CLAUSES:
(REQUIRED BY FTA MASTER AGREEMENT 49 U.S.C. FOR FEDERALLY FUNDED PURCHASES)**

- A. ENERGY CONSERVATION REQUIREMENTS (42 U.S.C. 6321 et seq., 49 CFR Part 18):** The contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.
- B. ACCESS TO RECORDS AND REPORTS (49 U.S.C. 5325, 18 CFR 18.36(i), 49 CFR 633.17):** Where the Purchaser is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 CFR 18.36(i), the Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representative access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 CFR 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 USC 5302(a)1, which is receiving federal financial assistance through the program described at 49 USC 5307, 5309 or 5311.

The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

- C. FEDERAL CHANGES(49 CFR PART 18):** Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or

by reference in the Master Agreement between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

D. RECYCLED PRODUCTS (42 USC 6962, 40 CFR PART 247, EXECUTIVE ORDER 12873): The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 USC 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

E. NO GOVERNMENT OBLIGATION TO THIRD PARTIES

- (1) The Purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
- (2) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

F. PROGRAM FRAUD AND FALSE OR FRAUDULENT AND RELATED ACTS (31 USC 3801 ET SEQ., 49 CFR PART 31, 18 USC 1001, 49 USC 5307

- (1) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 USC Section 3801 et seq. and US DOT regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.
- (2) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 USC Section 5307, the Government reserves the right to impose the penalties of 18 USC Section 1001 and 49 USC Section 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.
- (3) The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

G. TERMINATION (49 USC PART 18, FTA CIRCULAR 4220.1F):

- (1) Termination for Convenience (General Provision) – Winchester Transit may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Government's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to Winchester Transit to be paid to the Contractor. If the Contractor has any property in its possession belonging to Winchester Transit, the Contractor will account for the same, and dispose of it in the manner Winchester Transit directs.
- (2) Termination for Default [Breach or Cause](General Provision) – If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, Winchester Transit may terminate this contract for default. Termination shall be effected by serving a notice of termination on the contractor

setting forth the manner in which the Contractor is in default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract. If it is later determined by Winchester Transit that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, Winchester Transit, after setting up a new deliver of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

- (3) Opportunity to Cure (General Provision) – Winchester Transit in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions. If the Contractor fails to remedy to Winchester Transit's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [ten (10) days] after receipt by Contractor of written notice from Winchester Transit setting forth the nature of said breach or default, Winchester Transit shall have the right to terminate the Contract without any further obligation to the Contractor. Any such termination for default shall not in any way operate to preclude Winchester Transit from also pursuing all available remedies against the Contractor and its sureties for said breach or default.
- (4) Waiver of Remedies for any Breach – In the event that Winchester Transit elects to waive its remedies for any breach by the Contractor of any covenant, term or condition of this Contract, such waiver by Winchester Transit shall not limit Winchester Transit's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

H. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION: This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the contractor is required to verify that none of the contractor, its principles, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into. By Signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by City of Winchester. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to City of Winchester, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

I. CIVIL RIGHTS REQUIREMENTS (29 U.S.C. SECTION 623, 42 U.S.C. SECTION 2000, 42 U.S.C. SECTION 6102, 42 U.S.C. SECTION 12112, 42 U.S.C. SECTION 12132, 49 U.S.C. SECTION 5332, 29 CFR PART 1630, 41 CFR PARTS 60 ET SEQ. The following requirements apply to the underlying contract:

- (1) Nondiscrimination- In accordance with the Title VI of the Civil Rights Act, as amended, 42 U.S.C. Section 200d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. Section 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. Section 12132, and Federal transit law at 49 U.S.C. Section 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
- (2) Equal Employment Opportunity- The following equal employment opportunity requirements apply to the underlying contract:

- a. Race, Color, Creed, National Origin, Sex- In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. Section 2000e, the Federal transit laws at 49 U.S.C. Section 5332, the Contractor agrees to comply with all the applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. Section 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
 - b. Age- In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. Sections 623 and Federal transit law at 49 U.S.C. Section 5332, the Contractor agrees to refrain for discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with an implementing requirements FTA may issue.
 - c. Disabilities- In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. Section 12112, the Contractor agrees that it will comply with the requirements of the U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
- (3) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only is necessary to identify the affected parties.

J. DISADVANTAGES BUSINESS ENTERPRISE (DBE) (49 CFR PART 26)

- (1) This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantages Business Enterprises (DBE) is 10%. The agency's overall goal for DBE participations is 2%. A separate contract goal has not been established for this procurement.
- (2) The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT- assisted contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the City of Winchester deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see CFR 26.13(b)).
- (3) The successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

K. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS (FTA CIRCULAR 4220.1F): The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The contractor shall not perform any act, fail to perform any act, or refuse to comply with any Winchester Transit requests which would cause Winchester Transit to be in violation of the FTA terms and conditions.



City of Winchester, Virginia

Office of the City Attorney
Rouss City Hall
22601
540-667-1815
Fax: 667-2259

APPENDIX A CONTRACT #200751

THIS CONTRACT WAS MADE AND ENTERED INTO THIS ____ DAY OF _____, 2009, BY AND BETWEEN _____, F.I.N. OR S.S. NUMBER _____ ("CONTRACTOR"), AND THE **CITY OF WINCHESTER, VIRGINIA**, A POLITICAL SUBDIVISION OF THE COMMONWEALTH OF VIRGINIA ("CITY").

WHEREAS, THE CITY HAS PREVIOUSLY ISSUED INVITATION TO BID 200748 (ITB #200751), DATED SEPTEMBER 4, 2009, TO PROVIDE WASTE RECEPTACLES FOR THE CITY OF WINCHESTER, AS MORE FULLY DESCRIBED AND REQUESTED IN THE ITB, AND;

WHEREAS, CONTRACTOR HAS SUBMITTED A PROPOSAL IN RESPONSE TO THE ITB DATED 2009, SIGNED BY _____ WHICH STATES ASSIGNED PRICING TO THE CITY.

NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE MUTUAL COVENANTS AND AGREEMENTS HEREIN CONTAINED, THE PARTIES COVENANT AND AGREE AS FOLLOWS:

1. THE CONTRACTOR SHALL PROVIDE THE CITY THE SERVICES OUTLINED IN ITB #200751, WHICH IS INCORPORATED IN ITS ENTIRETY HEREIN BY REFERENCE. THE CITY SHALL PAY THE CONTRACTOR THE ASSIGNED PRICING SCHEDULE. THE CONTRACTOR SHALL FORWARD AN INVOICE FOR SUCH WORK TO THE TRANSIT DIRECTOR, OR DESIGNEE ON OR ABOUT THE FIRST AND FIFTEENTH DAYS OF EACH MONTH DURING THE TERM OF THIS CONTRACT. THE CITY SHALL PAY SUCH INVOICE IN ACCORDANCE WITH THE PROMPT PAYMENT ACT PROVISIONS OF THE VIRGINIA PUBLIC PROCUREMENT ACT, WHICH ARE INCORPORATED HEREIN BY REFERENCE.
2. THE TERM OF THIS CONTRACT SHALL ORIGINATE ON OCTOBER 1, 2009 AND REMAIN IN EFFECT FOR TWELVE (12) MONTHS. THE CITY RESERVES THE RIGHT TO CANCEL AND TERMINATE THIS CONTRACT, WITHOUT PENALTY, UPON TEN (10) DAYS WRITTEN NOTICE TO CONTRACTOR. THE PARTIES UNDERSTAND AND AGREE THAT BY MUTUAL AGREEMENT THIS CONTRACT MAY BE RENEWED FOR ONE (1) ADDITIONAL TWELVE (12) MONTH PERIOD.
3. APPLICABLE LAW AND VENUE: THE PARTIES AGREE THAT THIS CONTRACT FOR SERVICES SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE COMMONWEALTH OF VIRGINIA. ANY DISPUTE ARISING FROM THE PERFORMANCE OR NON-PERFORMANCE OF THIS AGREEMENT SHALL BE RESOLVED OR OTHERWISE LITIGATED IN THE CIRCUIT COURT FOR THE CITY OF WINCHESTER, VIRGINIA OR THE FOURTH CIRCUIT FEDERAL DISTRICT COURT IN HARRISONBURG, VIRGINIA.

4. IF ANY PROVISION OF THIS AGREEMENT IS FOUND TO BE ILLEGAL, INVALID OR UNENFORCEABLE, THAT SHALL NOT AFFECT THE VALIDITY OR ENFORCEABILITY OF ANY OTHER PROVISION OF THIS AGREEMENT.
5. THE CONTRACTOR HAS, AT THE TIME OF ITS EXECUTION OF THIS CONTRACT, PROVIDED THE CITY WITH A CERTIFICATE OF INSURANCE SHOWING THAT IT HAS CURRENTLY IN FORCE ALL OF THE INSURANCE REQUIRED BY ITB #200751. CONTRACTOR COVENANTS THAT SUCH CERTIFICATE SHALL REMAIN IN FULL FORCE AND EFFECT THROUGHOUT THE TERM OF THIS CONTRACT, AND THAT IT WILL PROMPTLY NOTIFY THE CITY IN THE EVENT, SUCH INSURANCE IS NO LONGER IN EFFECT FOR WHATEVER REASON.

IN WITNESS WHEREOF, THE PARTIES HAVE SIGNED THIS INSTRUMENT ON THE DATE INDICATED BELOW, WITH ONE (1) FULLY SIGNED ORIGINAL DELIVERED TO CONTRACTOR AND ONE (1) FULLY SIGNED ORIGINAL DELIVERED TO THE CITY.

CONTRACTOR:

CITY OF WINCHESTER:

BY: _____

BY: _____

TITLE: _____

TITLE: _____

DATE: _____

DATE: _____